

RESULT

Attorney-General's Response

Within two hours of deactivating www.GrandJurySA.org Garth Eaton, Chairman of The AJT, phoned Mr Graham Archer, Producer of *Today Tonight* Adelaide. He had kept Graham apprised of the manner in which the Acquittal & Release Program was unfolding and was highly pleased to hear these words:

“This is the first time in ten years that I have been able to interview an Attorney-General.”

Graham was referring to an interview recently granted by John Rau, Attorney-General for South Australia, late in the day on Wednesday 28/3/2012. The subject of the interview involved the introduction of a Criminal Cases Review Commission (CCRC) which Dr Bob Moles, former Associate Professor of Adelaide University had been advocating for many years. It was modelled on the UK CCRC which had very effectively opened old cases and taken them back into an appellate court with measurable success, freeing over 250 wrongly convicted prisoners in less than a decade.

This was territory that John Rau and his predecessors had skilfully avoided in the past given the sensitive nature of the Henry Keogh case and numerous other cases underpinned by the flawed forensic Findings of Dr Colin Manock. But now the pressure was on and the website, www.GrandJurySA.org, had been activated; something that had been brought to his attention as a matter of urgency by his Personal Assistant, Fiona.

When Diarmuid Hannigan, a Director of The AJT, was advised that John Rau had become the first Attorney-General to grant Graham Archer an interview in 10 years, he facetiously said:

“I wonder why?”

Criminal Law Consolidation Act 1935

There were two (2) drafts of a Criminal Cases Review Commission (CCRC) tabled before the SA Legislative Review Committee (LRC). The first was presented by Dr Bob Moles on Wednesday 28/3/2012 and the second by Henry Keogh's former pro bono counsel, Mr Kevin Borick QC, a week later on Wednesday 4/4/2012.

The differences between the two CCRCs were minor, but it was Mr Borick who also submitted a backup plan in the event that the committee would consider the introduction of a CCRC too expensive for the state of South Australia, among other arguments. This backup plan was to convince them that a simple amendment to the Criminal Law Consolidation Act 1935 would ensure that further appeals could automatically be granted when fresh evidence came to light following a failed first appeal.

No longer would it be necessary to rely on the petition process which placed the possibility of a second appeal (and others) solely at the discretion of the Attorney-General.

A recommendation to amend the Criminal Law Consolidation Act 1935 was drafted and submitted to the Attorney-General. If the SA government adopts these amendments then South Australia will be the first state or territory in Australia to have launched its criminal justice system into the 21st Century – in that regard, anyway.

On 28/11/2012, the Attorney-General, John Rau, responded by presenting his *Statutes Amendment (Appeals) Bill 2012* to South Australia's parliament. This proposed Bill was

immediately deemed to be too restrictive; not broad enough to allow some evidence defined as, 'fresh' and 'compelling', to convince a Supreme Court that it should grant a further appeal. However, the Bill is now tabled and open to suggested amendments by both houses of parliament and members of the public. New parliamentary sittings commencing in February 2013 will open matters for the purpose of discussing the submissions that have been made. It has been suggested that the Bill should be passed in a more favourable form by June 2013.

As soon as this *Statutes Amendment (Appeals) Bill 2012* – in its correct form – becomes legislation, Henry Keogh stands an immediate chance of being heard by a Court of Criminal Appeal; this time with a convincing swag of admissible, 'fresh' and 'compelling' evidence.

Summary

On 29 September 2011, The AJT wrote to Henry Keogh to advise him of the proposed Henry Keogh Fund and the role of The Grand Jury of South Australia. A Constitution for the Henry Keogh Fund was enclosed for his approval, along with the script, *A Stacked Deck – The Fate of Henry Keogh*. Also enclosed was a précis of his Release Program (later renamed Acquittal & Release Program).

In Henry's letter to the Chairman of The AJT dated 8 October 2011 he mentioned that he received a personal visit from the General Manager of Port Augusta Prison who handed him the letter of 29 September, at the same time explaining that the enclosures would be retained by prison authorities to be either marked 'Return to Sender' or simply placed in his property and marked 'not to be issued'.

This same package of information had also been sent to some of Henry's key supporters: Dr Bob Moles, Graham Archer (Channel 7 Adelaide), Debbie Marshall (Journalist), Faye Hambour, Liz Li, John Lewis and Joe Crowley (Henry's newly appointed pro bono solicitor). Henry spoke with two of these supporters and was advised of the content of the enclosures which had been withheld from him.

Unfortunately, it was the script, *A Stacked Deck – The Fate of Henry Keogh*, that caused the more genteel among Henry's supporters to express their concerns that this 'no holds barred' four-part television miniseries exposing the alleged crimes committed against Henry Keogh would be counter-productive. But this advice would prove to be incorrect.

The 150-page script and the Constitution of the Henry Keogh Fund had not been immediately stored with Henry's property and nor had it been returned to sender. It had "gone up the line" with some urgency. We could only wait for the fallout, whatever that may be. Henry had also instructed us to wait for his new pro bono legal team to achieve what others had failed to achieve, so there was little else we could do anyway.

In November 2011 the Chairman of The AJT received advice that Henry Keogh would be moved to the lowest security prison in South Australia. In fact, the accommodation and surrounds are more akin to a retirement village than a prison – Cadell Training Centre. Was the script and Constitution having the desired impact?

By mid-February 2012 it had become obvious that The AJT and The Grand Jury of South Australia had long since ceased to implement the Release Program. Both organisations had gone quiet, so why bother favouring Henry Keogh with five star prison accommodation at Cadell. The Solicitor-General still hadn't acted on the fourth Petition after three years and the Attorney-General was nodding off once again.

The AJT had honoured Henry's wish that we give his new pro bono team a shot at getting him back into a Court of Criminal Appeal. Their shot had fallen short.

It was time to move again. But this time, more chambers had been loaded. The script was at Final Pre-Production Draft stage; the website, www.GrandJurySA.org, was fully constructed and ready to activate; Reasons for Acquittal had been distilled from an ocean of injustices that had impacted on Henry Keogh's life; the Constitution of the Henry Keogh Fund now reflected a compensation payout to Henry of \$12.5 million; the Social Media Revolution was ready to be launched by squads of LinkedIn, Twitter and Facebook users, and the Electorates held by the South Australian Premier, Treasurer and Attorney-General were the immediate target for a door to door education process that would rock the foundations of the South Australian government.

The AJT's and The Grand Jury's sights were firmly on the doors leading to a Court of Criminal Appeal. The first salvo was fired on 27 February 2012; a second, a week later on 5 March 2012; and a third salvo on 26 March 2012 as the activation of www.GrandJurySA.org alerted all South Australians to their government's appalling breaches of human rights.

All in all, the backup plan to amend the Criminal Law Consolidation Act 1935 (CLCA) tabled by Mr Kevin Borick QC before the South Australian LRC on 4 April 2012 could not have been more timely.

At the beginning of September 2012 Henry Keogh was finally – 10 months after being advised – transferred to Cadell Training Centre. And later that month Ann Bressington, Member of the Legislative Council, was contacted by the Attorney-General, John Rau, who advised her of his willingness to support the establishing of a new legislated right of appeal.

We all trust that this legislated right of appeal (*Statutes Amendment (Appeals) Bill 2012*) to be enshrined in the CLCA will soon open the doors of an appellate court for Henry Keogh and many others into the future.

Update (February 2013)

In the early sittings of the South Australian Parliament – February 2013 – the Upper House passed the Statutes Amendment (Appeals) Bill 2012.

We now trust that Henry Keogh's pro bono legal team take full advantage of this ground-breaking legislation and secure a verdict of acquittal in South Australia's Court of Criminal Appeal. **He has been unlawfully jailed since 7 May 1994.**

Update (December 2014)

- By June 2013 Henry's legal team had filed an application to appeal his conviction based on the recently introduced South Australian legislation allowing further appeals in light of fresh and compelling evidence. [i.e. Statutes Amendment (Appeals) Bill 2012]
- On 17 February 2014 this application to appeal was heard in the Supreme Court of South Australia.
- On 11 March 2014 the Supreme Court granted leave for Henry Keogh to appeal his conviction for murder before the Full Court (3 judges) of the Court of Criminal Appeal.
- Commencing 22 September 2014, the Court of Criminal Appeal heard the compelling grounds on which Henry relied to ensure a verdict of acquittal, or at least, the original verdict set aside pending a fairer trial.
- Following the appeal, the Director of Public Prosecutions was allowed time to furnish further material, and on 3 December 2014 the judges retired to deliver their decision.

- On Friday, 19 December 2014 the Court of Criminal Appeal set aside (i.e. quashed) Henry Keogh's conviction and ordered a retrial.
- On Monday, 22 December 2014 Henry Keogh was released from prison after 20 years 7 months 2 weeks and one day of wrongful imprisonment.

Finally (November 2015)

- On Friday, 13 November 2015, the DPP announced that it would not be proceeding to retrial.

The Future

The Directors, Case Assessors and Voluntary Staff of The Australian Justice Tribunal wish Henry Keogh every success in his ongoing search for acquittal, pardon and eventual compensation, and we stand ready to assist him once again.

We are proud to be part of his journey.